

In the Matter of Nancy Caruso, Department of the Treasury
DOP Docket No. 2004-2656
(Commissioner of Personnel, decided July 15, 2004)

Nancy Caruso appeals the determination of the Director, Division of Human Resource Information Services, which denied her request for leave credit based on her prior service in the legislative district offices of former Senator John Matheussen and former Assemblyman Stephen Altamuro.

A review of Departmental records indicates that Ms. Caruso entered State service on October 6, 2003, when she was permanently appointed to the career service title of Data Processing Programmer 3 in the Division of Youth and Family Services.

The Division of Youth and Family Services inquired into Ms. Caruso's entitlement to leave credit based on her prior service in the legislative district offices of former Senator John Matheussen and former Assemblyman Stephen Altamuro. The Director, Division of Human Resource Information Services, determined that by virtue of *In the Matter of Barbara Townley, Department of the Treasury* (Commissioner of Personnel, decided September 10, 2003) (no statutory or regulatory authority for the award of SCOR benefits for unused sick leave accrued as a district office staff member), "the time a legislative district office staffer is employed in that capacity cannot be included in the calculation of 'continuous State service' for the determination of either Sick or Vacation leave entitlements."

On appeal, Ms. Caruso indicates that she worked on a full-time basis as "an employee of the New Jersey State Senate from August of 1993 to June 30, 2003, followed by the New Jersey State Assembly from July 1, 2003 through October 5, 2003." She notes that she worked as a Legislative Assistant and as Director of Constituent Services for Senator Matheussen and as Chief of Staff for Assemblyman Altamuro. She asserts that she has "been eligible to receive State Health Benefits, and participate in the Public Employees Retirement System and the Deferred Compensation program. It is my understanding...that an individual must be a state employee to participate in the programs." She contends that N.J.S.A. 11A:3-4 "is explicit in it's [sic] definition of a state unclassified worker, when it states that this includes employees of the legislative branch of government." She maintains that she has "always received a check from the payroll account drawn on the State of New Jersey." She argues that she was informed by the New Jersey State Senate Personnel Officer that legislative staff members who have transferred to other government branches have retained their service credit and accrued sick leave. She also indicates that she has "been advised by a representative from the Judicial branch that hundreds of staff members have transferred over the years to other branches of government without the loss of service credit and accrued sick leave." In support of her appeal, she submits additional documentation, including two Statements of Earnings and Deductions issued by the Department of Treasury, a copy of her 2003 W-2 form issued by the State of New Jersey and information from the Division of Pensions and Benefits website regarding the deferred compensation plan.

CONCLUSION

N.J.A.C. 4A:6-1.2(a) provides, in part, that full-time State employees in the career service shall be entitled to annual paid vacation leave based on their years of continuous State service in the career service. *N.J.A.C.* 4A:6-1.3 provides that full-time State employees are entitled to annual paid sick leave. *N.J.A.C.* 4A:6-1.5(e) provides for the carryover of unused vacation, administrative and sick leave for employees who transfer in State service.

N.J.S.A. 11A:3-4 provides that the State unclassified service includes employees in the legislative branch of State government. As noted in *Townley, supra*, each legislator, in addition to his or her salary, has at his or her disposal \$110,000 annually for the appointment of personal staff aides. The number of aides and the apportionment of the \$110,000 assigned to each staff member are at the discretion of the legislator. As such, a legislator's district office employees are considered personal staff and not employees of the legislative branch. Since *N.J.A.C.* 4A:6-1.5(e) provides for the carryover of unused vacation, administrative and sick leave for employees who transfer in *State service*, the Division of Human Resource Information Services correctly denied Ms. Caruso's request.

In addition, it is noted that State employees in the career service are afforded uniform vacation and sick leave. See *N.J.A.C.* 4A:6-1.2 and *N.J.A.C.* 4A:6-1.3. Unclassified State employees are also subject to leave policies which are uniformly applied within their respective agencies. It is also noted that benefit programs, such as SCOR, are predicated upon the award of uniform leave. See, e.g., *N.J.A.C.* 4A:6-3.1(a)2. However, no definitive guidelines exist for legislative district office members on the award, accrual and accounting of their leave time. Rather, each legislator determines whether district office employees are entitled to leave time, the amount of leave time and whether this time is reported. Under these circumstances, it is appropriate to deny leave credit based on service in a legislative district office.

With respect to the individuals who Ms. Caruso argues have either received SCOR awards or retained service credit and accumulated sick leave, her claims are not fully documented and Department of Personnel records are not dispositive as to whether these individuals were employed as legislative district office staff members. However, even assuming that these individuals were legislative district office staff and either retained leave credit or were awarded SCOR for unused sick leave accrued as district office staff, Ms. Caruso cannot benefit from such an error. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977).

With respect to participation in State health benefits, deferred compensation and the Public Employees Retirement System (PERS), the Board notes that determinations regarding participation in these programs are governed by different regulations, which the Board does not have jurisdiction to review.

Regarding Ms. Caruso's argument that she has "always received a check from the payroll account drawn on the State of New Jersey," method of payment is not dispositive of State employment status. However, it is noted that the Legislature has charged Centralized Payroll with providing W-2 forms to district office staff at the end of each calendar year.

Accordingly, Ms. Caruso's service entry date for leave entitlement purposes is October 6, 2003.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.